

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 955 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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ARVINDBHAI M PATEL

Versus

STATE OF GUJARAT

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Appearance:

MR JD AJMERA for Petitioner

MR ND GOHIL for Respondent No. 1

None present for Respondent No. 2 to 4

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 18/10/96

ORAL JUDGMENT

Heard learned counsel for the parties. Challenge is made by this Special Civil Application to the inaction on the part of the management in not giving appointment to the petitioner as a teacher in the respondent No.4-school and for directions to the authorities to compel the respondent No.4 to give him appointment as a teacher in the school with effect from 20th November

1986.

2. It is not in dispute that the respondent No.4 had advertised in the newspaper dated 10.8.86 inviting applications for the post of teacher in the respondent No.4-school and in response to the said advertisement, both, the petitioner and one Smt. Mayaben J. Joshi has applied for the said post. It is an admitted case of the petitioner that Mayaben J. Joshi and the petitioner, both were interviewed by the selection committee and as a result thereof, Smt. Mayaben J. Joshi has been given appointment on the said post and she joined the said post. The petitioner has joined Smt. Mayaben J. Joshi as respondent No.5 in this case, but later on the name of respondent No.5 was ordered to be struck off by this Court. Meaning thereby, Smt. Mayaben J. Joshi is no more a party to this petition. The petitioner has made a prayer in a clever manner, otherwise in substance it is a case of challenge of appointment of Smt. Mayaben J. Joshi on the said post. Relief of the nature which has been prayed by the petitioner in this Special Civil Application cannot be granted to the petitioner unless the appointment of Smt.. Mayaben J. Joshi is declared to be illegal and the same is quashed and set aside. If we go through the contents of Special Civil Application it is clear that the petitioner has challenged the appointment of Smt. Mayaben J. Joshi in this petition though specific prayer has not been made in the prayer clause. Smt. Mayaben J. Joshi was a necessary party and in case relief of the nature as prayed for is granted, then certainly it will prejudice her and affect the right of a person who is not before this Court. In absence of concerned party, relief which has been prayed by the petitioner in this writ petition cannot be granted. In absence of Smt. Mayaben J. Joshi who is a necessary party to this petition, it is difficult to grant relief as prayed for because such relief granted will violate the principles of natural justice. In the case of Ishwarsingh v. Kuldipsingh, reported in 1995 SCC (L & S) 373, the Apex Court held that writ petition impugning selection or appointment without including and serving of the selected candidates is not maintainable. It has further been held by the Apex Court in the aforesaid case that in such matters otherwise also, no interference could be made more so when the appointments had already been made. Leaving apart the question that this writ petition suffers from the defect of non-joinder of necessary parties, this Court cannot be oblivious of the fact that Smt. Mayaben has been selected in the year 1986 on the said post and for all these years she would have been working on the post. At this stage in case she

is ordered to be ousted from the post, which has to be, in case the prayer made by the petitioner is allowed, then she will be out of employment and her accrued rights would be taken away. By working on this post for about 10 years, she has acquired right of holding the post and the petitioner in fact, has permitted her to acquire that right by not joining her as a party in this Special Civil Application. Another fact has also to be noticed. The petitioner is in employment at M.P. High School, Jarod, Ta. Vaghodia, Dist. Vadodara, and he is working for all these years there. It is not the case where the petitioner is without employment.

3. Taking into consideration the totality of the facts of the case, this writ petition fails and the same is dismissed. Rule discharged. No order as to costs.

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(sunil)